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Crimes of gender-based persecution within the policy of the International Criminal Court. Policy and jurisprudential aspects

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Abstract: The present paper aims to analyze and highlight the 2014 Policy Paper and the 2022 Policy Paper on Gender-Based Persecution, both of which were principally authored by the Office of the Prosecutor of the International Criminal Court (ICC). Sexual violence crimes, as well as gender-based persecution, are a reality that began with international criminal tribunals and has found widespread expression in the work of the ICC, providing recognition for sexual and gender-based crimes (SGBV) through the jurisprudence obtained to date. This lays the foundation for development towards a system of greater protection as well as a continued fight for non-impunity for acts committed under international criminal law.

Keywords: SGBV; ICC; international criminal jurisprudence; gender-based persecution; sexual crimes; Office of the

Prosecutor's Policy; LGBTIQ; human rights protection; international criminal law; 2014 policy document; intent and motive.

Introduction

Persistent gender-based violence, rape, and sexual abuse were condemned under humanitarian law, which reflected legitimate war and the male experience of armed conflict as conduct that offended a woman's dignity and the burden of a family (Steains, 1999; Van Schaack, 2009; Liakopoulos, 2018a; Liakopoulos, 2018b).

The history of wartime abuse against women, girls, gays, bisexuals, lesbians, etc. was a reality (Davis, 2021). The crime of gender-based persecution had long been recognized and charges were prosecuted. An important milestone was the adoption of the Rome Statute, which established the International Criminal Court (ICC). With it, the international community made progress in recognizing sexual and gender-based crimes (SGBV), that is, serious crimes that were also worthy of condemnation.

The ICC's statute as an international criminal instrument contained its own definition of gender. Unlike other international criminal tribunals, the ICC was authorized to investigate and prosecute a range of SGBV crimes, expressly

recognizing the crime of gender-based persecution as a crime against humanity.

The Office of the Prosecutor has focused on investigating and prosecuting SGBV crimes, including the crime of gender-based persecution. The Office aims to promote the prosecution of SGBV crimes, including the crime of gender-based persecution. The Office draws attention to the numerous SGBV crimes committed by providing justice for the victims of these crimes.

The Office of the Prosecutor has highlighted its intention to focus resources and attention on sexual and gender-based violence crimes with the publication of a 2014 document on sexual and gender-based crimes (Liakopoulos, 2018c).¹ From December 2022, the Office of the Prosecutor has signaled its intention to prosecute sexual and gender-based violence crimes, especially the crime of gender-based persecution.²

The Prosecutor's Office regarding gender-based violence crimes hopes for a solid development within the international criminal law context for the victims of such crimes.³ According to the

¹See: Policy Paper on Sexual and Gender-Based Crimes, INT'L CRIM. CT. [ICC], OFF. OF THE PROSECUTOR (June 2014), <https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-CrimesJune-2014> Accessed on 15.09.2025.

²See: Policy on the Crime of Gender Persecution, INT'L CRIM. CT. [ICC], OFF. OF THE PROSECUTOR 3 (7 Dec. 2022), <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf> Accessed on 15.09.2025.

³Ending Impunity for Anti-LGBTIQ Persecution: ICC Launches Gender Persecution Policy Paper, OUTRIGHT INT'L (26 December 2022), <https://outrightinternational.org/insights/ending-impunity-anti-lgbtq-persecution-icc->

opinion of Lisa Davis:

“(...) gender-based crimes target women, men, children, LGBTIQ, non-binary and gender non-conforming persons, on the premise of gender discrimination (...) gender-based crimes are used as punishments against those who are perceived to transgress assigned gender narratives that regulate “accepted” forms of gender expression manifest in, for example, roles, behaviors, activities, or attributes (...) crimes may meet the threshold for persecution (...) underlying crimes such as rape, enslavement, torture, or murder are used as punishments for deviating from gender narratives, or when the crime itself is the narrative, as it often is in the case of enslavement and forced marriage (...)” (Davis, 2021).

By prosecuting the crime of gender-based persecution, the Office of the Prosecutor continues its positive commitment to ensuring accountability for perpetrators of sexual and gender-based violence. The practice of achieving the policy's objectives has led to the protection and recognition of the fundamental rights of women, girls, and gay men, and to any challenge to gender norms and stereotypes.

The primary objective was to highlight the Office of the Prosecutor's gender-based persecution policy by demonstrating

[launches-gender-persecution-policy-paper](#) (Accessed on 15.09.2025): “(...) policy paper on gender persecution is an important step forward for holding perpetrators accountable when they commit violence against people due to their perceived sexual orientation, gender identity or expression, or sex characteristics (...)”. Gender Persecution: Strengthening International Norms to Ensure Accountability, MADRE, <https://www.madre.org/gender-persecution> (Accessed on 15.09.2025): “(...) Policy Paper strengthens recognition of the crime of gender persecution in investigations and legal proceedings and reaffirms the understanding of gender in international criminal law. This moment reaffirms-once and for all-that targeting women and LGBTIQ+ persons in peacetime and conflict can amount to a crime against humanity, and that survivors of these crimes cannot be silenced (...)”.

the progressive role of the ICC (Liakopoulos, 2019a) in changing the course of its human history regarding the recognition of crimes of sexual and gender-based violence.

The ICC's current policy was based on the crime of gender-based persecution. The contributions of the Rome Statute and of international criminal law on SGBV, which included the crime of gender-based persecution, were also examined.

Part III was based on the codification according to the 2014 Prosecutor's Office's Policy Document, and the investigations and prosecutions of SGBV crimes stemmed from the Office's decision to develop and allocate resources to ensure that these crimes were not neglected, as had happened in the past.

Part IV focused on the 2022 gender-based persecution policy, describing its main features. Part IV addressed the implementation of challenges that arose. The practice proved positive in terms of easy convictions.

The work of the Prosecutor was highlighted, as he declared his intention to engage in the training and education of other stakeholders who ensured the effective implementation of this policy.

Investigations and prosecution of sexual and gender-based crimes in international criminal law

With the establishment of the Rome Statute in 1998 and the creation of the ICC in 2002, the fight against gender-based sexual abuse became a reality (Washburn, 1999; Sadat, 1999).⁴

With regard to states that ratified the Rome Statute, the ICC had automatic jurisdiction over the crimes of genocide, crimes against humanity, and war crimes, that is, crimes committed on the territory of those states and against their nationals.⁵

The ICC, as a permanent court, has jurisdiction that respects the work of international criminal tribunals worldwide combating these crimes. *Ad hoc* tribunals authorized to prosecute accused individuals who committed atrocity crimes faced limited jurisdiction in terms of geography and time. The ICC has operated on a system of complementarity based on the referral to a court by the state that has jurisdiction over the matter of those who do not want and cannot proceed (Radosavljevic, 2008).⁶

Limitations concerning the exercise of the jurisdiction of the

⁴In 1948, the Genocide Convention referenced the possibility of individuals being tried by “such international penal tribunal as may have jurisdiction.” See Convention on The Prevention and Punishment of Genocide Art. 4, 9 Dec. 1948, 78 U.N.T.S. 277. Soon after, the International Law Commission (ILC) was tasked with preparing a draft statute for such a permanent court.

⁵Rome Statute, Arts. 5–8, 11, 12(2). The ICC also has jurisdiction over the crime of aggression, but it may only prosecute that crime against states that have ratified a special aggression amendment. Even then, the Rome Statute provides that states have free reign to opt out of the ICC’s aggression jurisdiction.

⁶Rome Statute, supra note 12, art. 17.

ICC are linked to the complementarity role between responsibility and national jurisdictions that the ICC promotes (Burke-White, 2008; LaPlante, 2010; Weerdesteijn, 2020).⁷ According to the preamble of the ICC, one immediately notices the result that has contributed to the non-impunity of atrocity crimes as well as to the prevention of future crimes.

The definition of gender

The prosecution and investigation of sexual and gender-based violence crimes after the creation of the ICC were:

“(...) celebrated as an important step towards ending impunity for sexual crimes under international law (...)” (Oosterveld, 2005; Altunjan, 2021).⁸

⁷Strategic Plan 2019-2021, Int’l Crim. Ct. [ICC], Off. of the Prosecutor 10 (17 July 2019), <https://www.icc-cpi.int/sites/default/files/itemsDocuments/20190726-strategic-plan-eng.pdf> (Accessed on 15.09.2025). According to the 2019-2021 Strategic Plan, the OTP is making progress in operationalizing its approach to positive complementarity, as demonstrated by evidence of: (1) new investigations started by countries or investigations progressed based on information provided by the OTP; (2) increased requests for assistance from domestic jurisdictions; and (3) increased investigative cooperation between the OTP and various countries, all of which, are assisting in closing the impunity gap. Indeed, scholars have highlighted the important role the ICC can play in prompting domestic accountability through the complementarity regime. LaPlante affirms that: “(...) the importance of aligning domestic justice initiatives with those of the ICC and international law generally, indicating that domestic assent to ICC goals helps encourage more effective systems of both domestic justice and international justice (...). Burke-White affirms that: “(...) Rome Statute provides for mechanisms of increased cooperation by nations and the ICC to ensure goals of international criminal justice are fully realized on both domestic and international scales (...)”. Weerdesteijn, Hola affirmed that: “(...) discussing how, in a complementarian regime of international law, the ICC is empowered to prosecute only when domestic judicial systems are unwilling or unable to do so, thereby theoretically increasing the desire of domestic judiciaries to resolve matters in-country (...)”.

⁸Altunjan affirms that: “(...) Richard Goldstone, former prosecutor for the *ad hoc* tribunals as stating that with the adoption of the Rome Statute and the creation of the ICC “gender crimes are now given the recognition they were denied for so many

The ICC was the first court to define the term gender in a founding statute (Grey, 2019). In Article 7, paragraph 3 of the Rome Statute, the term gender is referred to the two sexes, male and female. The term gender did not mean anything different than what was meant. Criticisms tended to focus on two lines of argument regarding the ICC's definition, which equated gender with biologically determined sex (Oosterveld, 2005; Altunjan, 2021), eliminating the socially based concept of gender (Altunjan, 2021). The International Law Commission (ILC) of 1994 contained no other references relating to gender.⁹

The ILC, through the 1998 Rome Conference, included pressure exerted on non-governmental organizations, especially the Women's Caucus for Gender Justice¹⁰ and the related recognition of state delegations to the ICC, which were able to comprehensively address crimes only if the statute was sensitive to the relevant concept of gender (Steians, 1999).

This position was universal and shared by conservative groups such as the Arab states and the Holy See, and by other states wary of the term “gender”, which used the Rome Statute to include the terms “gender”, “context of society”, and “of the two

years” (...).’

⁹Report of the Int’l L. Comm’n on the Work of its Forty-Sixth Session, U.N. GAOR, 49th Sess., Supp. No. 10, art. 20, at 70–73, U.N. Doc. A/49/10 (1994).

¹⁰Rome Statute Enters into Force, WOMEN’S CAUCUS FOR GENDER JUST. (1 July 2002): <http://www.iccwomen.org/wigjdraft1/Archives/oldWCGJ/news/prjuly1.html> Accessed on 15.09.2025.

sexes”. This position was not universal, but conflicted with the term “of the two sexes”.

On the other hand, the sociological reference in the term gender was reaffirmed (Oosterveld, 2005).¹¹ Criticisms were few but significant for the definition of gender in the Rome Statute. A definition that was not yet broad, inclusive and univocal (Grey, 2019).¹² However, the sociological inclusion of this term was considered as a step in the right direction.¹³ Oosterveld brought to light various alternatives, in this regard, during the negotiations of the Rome Statute.¹⁴ The programmatic document of the Office of Prosecutor of 2014 and the policy on gender-based persecution of 2022 were committed to the definition of gender taking into account Art. 21, par. 3 of the Rome Statute as

¹¹Oosterveld affirms that: “(...) both sides of the gender debate concluded that although the definition was “unusual” it had “sufficient flexibility as well as precision” (...)”.

¹²Grey affirms that: “(...) group of scholars and non-governmental organizations led a strong campaign to revise the definition of gender included in the International Law Commission’s draft articles for a new treaty on crimes against humanity (...) the definition was outdated and did not “properly account for current understanding of gender could sideline women, lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) persons and other marginalized and vulnerable victims (...)”. See also: Gendering the Crimes Against Humanity Treaty: A Timeline of HRGJ Clinic Intervention.

¹³Oosterveld affirms that: “(...) the gender definition arrived at was a result of “constructive ambiguity” (...) a tactic used by diplomats and other negotiators, especially in consensus negotiations, to adopt indefinite language to seemingly resolve disparate points of view (...)”.

¹⁴See 2014 Policy Paper, op. cit.: “(...) definition [of gender] acknowledges the social construction of gender and the accompanying roles, behaviours, activities, and attributes assigned to women and men, and girls and boys (...) in accordance with internationally recognised human rights pursuant to article 21(3) (...)”. Gender Persecution Policy, op. cit., “(...) a social construct, gender varies within societies and from society to society and can change over time. This understanding of gender is in accordance with Article 21 of the statute (...)”.

well as provisions of the Atatute that:

“(...) internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender (...)” (Steians, 1999).¹⁵

The path to criminalizing crimes of sexual and gender-based violence

The definition of gender in the Rome Statute is not a unique achievement emerging from the negotiations establishing the ICC. The ICC Statute criminalizes a broader range of crimes of sexual and gender-based violence than previous international criminal tribunals (Van Schaack, 2009).

The establishment of the tribunals, as a result of significant commitment by the international community, guarantees instruments that explicitly contain and prohibit rape and other forms of sexual violence from individual criminal liability (Van Schaack, 2009; Liakopoulos, 2019b; Liakopoulos, 2019c).

The 1907 Hague Convention on War on Land (IV) did not include references to sexual violence (Altunjan, 2021). The Geneva Convention of 1949 did not include rape or the crime of sexual violence within the framework of grave breaches.¹⁶ The Charter of the International Military Tribunal at Nuremberg did

¹⁵Steains affirms that: “(...) the Rome Statute is the first international treaty to recognize a broad range of acts of sexual and gender-based violence as among the most serious crimes under international law (...)”.

¹⁶Statute of the International Criminal Tribunal for the Former Yugoslavia art. 5(g), U.N. Doc. S/25704, (3 May 1993). Security Council Resolution 955, Annex, Statute of the International Criminal Tribunal for Rwanda art. 3(g), U.N. Doc. S/RES/955, (8 Nov. 1994).

not explicitly refer to sexual crimes (Steians, 1999).

The *ad hoc* tribunals and statutes of the ICTY and ICTR specifically included rape as a crime giving rise to criminal proceedings related to crimes against humanity (Steians, 1999).¹⁷ Neither, however, explicitly included rape as a war crime.¹⁸

The provisions of the ICC Statute relating to crimes of sexual and gender-based violence demonstrate the guarantee of justice for victims of crimes. Acts of rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, and any other form of sexual violence are prosecuted as supporting evidence for a charge of crimes against humanity committed within the scope of a direct attack on any civilian population.¹⁹ Evidence is used to support a charge of war crimes committed within the context of an international or non-international armed conflict (Brown, Grenfel, 2003; Oosterveld, 2006).²⁰

The ICC Statute was the only international instrument that expressly recognized crimes against humanity and gender-based

¹⁷Steians affirms that: “(...) failure to include rape as a war crime meant that prosecutors often had to meet the more difficult burden of proving the threshold elements for establishing a crime against humanity charge (for example, proving a widespread attack against a civilian population) (...) the ICTY prosecutor was able to prosecute individuals who had committed rape under the war crimes provision of the statute by characterizing the acts committed as, for example, “torture” or “other inhumane acts (...)”.

¹⁸Rome Statute: art. 7(1)(g).

¹⁹Rome statute: arts. 8(2)(b)(xxii), 8(2)(e)(vi).

²⁰Brown, Grenfell affirmed that: “(...) significant the Rome Statute’s codification of the crime of gender persecution, while also arguing that gender persecution is already part of customary international law (...)”.

persecution (Oosterveld, 2006). This does not mean that other international criminal tribunals have ignored the crime of persecution and of gender-based persecution for political, racial, and/or religious reasons (Oosterveld, 2006). Therefore, the ICC Statute has defined persecution as an intentional and severe deprivation of fundamental rights.²¹

Persecution based on gender constitutes a crime against humanity, as the perpetrator of any identifiable group or collectivity on the basis of any gender and in relation to the crime falls within the jurisdiction of its own Court.²² Gender-based persecution, according to Article 7, paragraph 1, is committed as part of a widespread, systematic attack directed against a civilian population aware of the attack.

Persecution is different from crimes against humanity since it covers a range of acts that meet the criteria of crimes such as rape, murder and extermination, including the severe deprivation of fundamental civil, political, social, and economic rights, regardless of whether the harm results from the related physical or mental deprivation (Brown & Grenfell, 2003).

The inclusion of crimes against humanity and gender-based persecution in the Rome Statute represents an important step in the development of international criminal law regarding the prosecution of sexual and gender-based violence.

²¹Art. 7(1)(h)(1)–(3).

²²Art. 7(1)(h)(1)–(3).

The provisions of the ICC Statute on gender-based crimes and sexual and gender-based violence have restricted the shortcomings of previous international treaties, demonstrating a commitment to punishing crimes that have been ignored. Their codification does not equate to criminal prosecution.

The laws fail to ensure accountability for perpetrators and do not provide justice to victims of sexual and gender-based violence.²³ The measures adopted by the Office of the Prosecutor of the ICC for prosecuting crimes of sexual and gender-based violence occurred in December 2022.

The 2014 document for the prosecution of sexual and gender-based crimes. From theory to practice

The ICC Prosecutor's Office recognized the need to ensure that sexual and gender-based violence crimes are investigated and prosecuted. The 2006 ICC Prosecutor's Office report concerning criminal strategy selected cases that represent criminality and victimization²⁴ paying particular attention to the investigation methods for crimes committed against minors as well as for

²³Report on the Activities Performed During the First Three Years (June 2003-June 2006), ICC Office of the Prosecutor (12 September 2006), https://www.icc-cpi.int/sites/default/files/OTP_3yearreport20060914_English.pdf Accessed on 15.09.2025.

²⁴Report on Prosecutorial Strategy, ICC Office of the Prosecutor, par. 4(e) (14 September 2006), https://www.icc-cpi.int/sites/default/files/ProsecutorialStrategy20060914_English.pdf Accessed on 15.09.2025.

sexual and gender-based crimes.

The Prosecutor's Office reiterated that the Prosecutor's Strategy for the period 2009-2012 aimed to improve the quality of proceedings addressed as elements of crimes and prosecution practices in relation to gender-based crimes for the coming years.²⁵

The former ICC Prosecutor Fatou Bensouda noted that sexual and gender-based violence crimes have increased.²⁶ The Office's 2012-2015 strategic plan announced some strategic objectives regarding the investigation and prosecution of crimes.²⁷ The strategic objective of the Office of the Prosecutor was committed to:

“enhanc[ing] the integration of a gender perspective in all areas of our work and continuing to pay particular attention to sexual and gender-based crimes and crimes against children (...)”.²⁸

²⁵Prosecutorial Strategy 2009-2012, ICC Office of the Prosecutor (1 February 2010), <https://www.icc-cpi.int/sites/default/files/OTPPProsecutorialStrategy20092013.pdf> Accessed on 15.09.2025.

²⁶Ms. Fatou Bensouda, International Criminal Court, <https://www.icc-cpi.int/about/otp/who-s-who/fatou-bensouda> Accessed on 15.09.2025.

²⁷Reflections on my term as Prosecutor of the International Criminal Court, ICC Office of the Prosecutor, 5 (15 June 2021), <https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210615-prosecutor-fatou-bensouda-end-of-term-farewell-statement.pdf> (Accessed on 15.09.2025): “(...) elevated the effective investigation and prosecution of sexual and gender-based crimes and crimes against children as strategic goals (...)”.

²⁸Fatou Bensouda, “Without Fear or Favour”: Reflections on my term as Prosecutor of the International Criminal Court, ICC Office of the Prosecutor, 5 (15 June 2021), <https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210615-prosecutor-fatou-bensouda-end-of-term-farewell-statement.pdf> (Accessed on 15.09.2025).

The Office of the Prosecutor determined and did not leave its experience to:

“(...) the other tribunals in investigating and prosecuting sexual and gender-based violence (...)”.²⁹

The Office of the Prosecutor developed and published a programmatic document relating to the investigation and prosecution of sexual and gender-based violence crimes according to the 2012-2015 strategic plan (Oosterveld, 2018).³⁰ The policy document released in 2014 discussed in detail and included practices of the Office of the Prosecutor that furthered recommendations and stated goals up to that point.

(Follows). The 2014 Policy Paper

In 2014, the Office of the Prosecutor published a policy paper on sexual and gender-based crimes. This was a precise, comprehensive policy for gender protection at the international level, that strengthened the capacity to systematically and comprehensively investigate and prosecute perpetrators of sexual and gender-based crimes, falling within the jurisdiction of the ICC.

²⁹See Strategic Plan June 2012–2015, ICC Office of the Prosecutor (11 Oct. 2013), <https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Strategic-Plan-2013.pdf> Accessed on 15.09.2025.

³⁰ICC Press Release, ICC Prosecutor, Fatou Bensouda, launches Policy on Sexual & Gender-Based Crimes: Ensuring victims have a voice in court today can prevent these crimes tomorrow (9 December 2014): <https://www.icc-cpi.int/news/icc-prosecutor-fatou-bensouda-launches-policy-sexual-gender-based-crimes-ensuring-victims-have> Accessed on 15.09.2025.

The Prosecutor formulated specific charges in cases of sexual violence pursuing a path to end the impunity for sexual and gender-based violence crimes prevalent in the situations investigated. The policy paper demonstrated that the Office of the Prosecutor shed light on many sexual and gender-based violence crimes committed, thus bringing justice to the victims of these crimes from birth. In this spirit, as Valerie Oosterveld stated:

“(...) the Office of the Prosecutor brought fifty- seven charges of sexual and gender-based violence in twenty cases, which represents a solid level of attention to these crimes in most cases. Thirty-five of these charges proceeded to the preliminary Confirmation of Charges stage, but only twenty of these charges were actually confirmed (...). The Prosecutor failed to secure a single conviction on these charges (...) charges also failed at each of these levels, sexual and gender-based charges were particularly vulnerable (...) vulnerability resided, in part, in the Office of the Prosecutor, ranging from narrow and inadequate conceptions of gender amongst staff, inadequate investigations and evidence gathering processes, weak case strategies, and weak evidence (...). ICC’s judges also contributed to the high failure rate by failing to apply previous international criminal law developments on sexual and gender-based violence when excluding certain forms of sexual violence as insufficiently grave and not permitting cumulative charges of (...) rape and torture (...)” (Chappel, 2016).³¹

³¹Harvard Recent Policy Paper International Criminal Law-Sexual and Gender-Based Crimes-ICC Outlines Policies to Help Improve Prosecutorial Outcomes-The Office of the Prosecutor of the ICC, Policy Paper on Sexual and Gender-Based Crimes (2014): “(...) the flexibility in the Rome Statute permits the prosecution of SGBV crimes and the Office’s stated commitment to prosecuting such crimes, as of 2014, the OTP had not yet secured a conviction of a defendant charged with such crimes (...)”.

The Office of the Prosecutor continued and took measures to address the challenges encountered with new strategies and tools. To be successful, this policy had to be based on the fight against impunity for crimes of sexual and gender-based violence (Altunjan, 2021).³²

The term gender in the 2014 policy document appears in Article 7, paragraph 3 of the Statute of Rome,³³ explicitly interpreting the social context as a recognition of a social construction of gender according to the roles, behaviors, and activities attributed to women and men, girls and boys.³⁴

The gender-related crimes within the 2014 policy document concerned crimes of a sexual nature limited to women and girls. The 2014 policy document also stated that the Office of the Prosecutor interpreted and applied the definition of gender consistently with Article 21, paragraph 3 of the Statute of the ICC and internationally recognized human rights.

The prosecutor's office also considered acts of violence based on sex discrimination related to socially constructed gender roles.

The 2014 policy document addressed challenges that made it difficult to conduct investigations and prosecutions in the area of sexual and gender-based violence due to social, cultural, and

³²See, Harvard Recent Policy Paper, op. cit.,: “(...) operationalization of a gender-conscious approach to prosecution, the Paper marks an important moment in the history of the international prosecution of sexual and gender-based crimes. The mere publication of this new path forward is significant (...)”.

³³2014 Policy Paper, op. cit., parr. 15-18.

³⁴2014 Policy Paper, op. cit., parr. 16-18.

religious factors. National investigations were never concluded due to the lack of available forensic and documentary evidence as well as due to inadequate and limited support services nationwide.

The Office of the Prosecutor filed charges for sexual and gender-based violence crimes, believing that they were supported by evidence. The Office itself stated that:

“(...) a gender analysis to all the crimes within its jurisdiction (...) is an examination of the underlying differences and inequalities between women and men, and girls and boys, and of the power relationships and of other dynamics that determine and shape gender roles in a society, giving rise to assumptions and stereotypes (...) the work of the Office requires a consideration (...) crimes, including sexual and gender-based crimes, are related to gender norms and inequalities (...)”.³⁵

The 2014 policy document recommended and implemented gender analysis at all stages of the Office of the Prosecutor's work. The Office also assessed, in a complementary manner, obstacles related to domestic proceedings.

These obstacles included discrimination and gender stereotypes in substantive law and procedural rules that limit access to justice and to crime victims; the lack of protection measures for victims of sexual violence; measures that insufficiently address investigations in the prosecution of sexual and gender-based crimes; and the lack of protection for victims of sexual and

³⁵2014 Policy Paper, op. cit., parr. 8, 12, 16.

gender-based violence.

During the investigation,³⁶ the prosecutor's office emphasized strategies to overcome the difficulties associated with obtaining sufficient evidence to demonstrate how sexual and gender-based violence crimes are committed. In such a way, it has collected various types of evidence, such as forensic evidence, clinical examinations, forensic epidemiology and autopsies, documentary evidence, formal and informal notifications, expert reports and indirect evidence for the commission of crimes.³⁷ Database design analysis, statistics, and mapping techniques identified and supported crime patterns and the organization of structures.

The 2014 policy document collaborated with authorities and local organizations that identified victims of crimes and sexual and gender-based violence, and the use of victim mediators.³⁸

During the investigation and prosecution phases, the 2014 policy document laid the foundation for the social well-being of victims and witnesses of sexual and gender-based violence crimes by affirming and highlighting that investigators were adequately trained, understanding the cultural issues surrounding the investigative process and providing support to

³⁶Policy Paper on Preliminary Examinations, ICC Office of the prosecutor, (November 2013).

³⁷Policy Paper on Preliminary Examinations, ICC Office of the prosecutor (November 2013), <https://www.legal-tools.org/doc/acb906/pdf> Accessed on 15.09.2025.

³⁸2014 Policy Paper, op. cit., par. 41.

witnesses throughout the process.

The Office of Child Protection did not intend to pursue its program regarding investigations for criminal proceedings, sexual and gender-based violence crimes.

The 2014 Policy Paper also referred to the principle of positive complementarity, which encouraged states to fulfill their responsibilities to investigate and prosecute crimes, including sexual and gender-based crimes. The guidelines contained in the 2014 Policy Paper are of great assistance to states in this effort (Oosterveld, 2018).³⁹

The 2014 strengthened policy in practice

The strengthened policy provides the Prosecutor's Office with the capacity to investigate and prosecute perpetrators of sexual and gender-based violence, thus applying a gender analysis throughout its work. The success of the Office and the 2014 Strengthened Policy in practice is linked to its own results (Grey, 2019).⁴⁰

The Prosecutor's Office routinely increases the number of charges against those accused of sexual and gender-based

³⁹Oosterveld affirms that: “(...) 2014 Policy Paper is a “noteworthy addition to international guidance to states and others on how to sensitively prosecute sexual and gender-based crimes” (...)”.

⁴⁰Grey affirms that: “(...) some reforms in (1) investigation practices, (2) formalized practices to review evidence to determine which charges may be sustained, and (3) the practice of increasing legal expertise within the Office and by engaging outside experts (...)”.

violence crimes. The Prosecutor's Office investigates and prosecutes the crime of gender-based persecution as a practice that influences the strengthened policy in 2022.

The 2021 report for the International Federation for Human Rights (FIDH) and Women's Initiatives for Gender Justice (WIGJ) examines what former Prosecutor Bensouda initially wanted to achieve regarding the attribution and accountability of sexual and gender-based violence crimes at the ICC.⁴¹

Sexual and gender-based violence prosecution in practice

By pursuing allegations of sexual and gender-based violence as evidence, the former Prosecutor Bensouda achieved the objectives of the 2014 policy document.⁴² The charges were translated into convictions, which represented a significant step in the process of providing justice to victims for the crimes committed through convictions and compensation.

The work of the former Prosecutor Bensouda was based on

⁴¹FIDH affirms that: "(...) FIDH monitors the investigation and prosecution of SGBV crimes at the ICC, with a particular focus on progress following the adoption of the 2014 Policy Paper. FIDH also works with organizations to document allegations of SGBV concerning crimes and providing evidence to the OTP (...) WIGJ monitors the ICC's cases that include SGBV crimes and advocates for the implementation of the 2014 Policy Paper's goals and objectives (...)".

⁴²PILPG Comments on the International Criminal Court Office of the Prosecutor's Policy Initiative to Advance Accountability for Gender Persecution under the Rome Statute, PILPG <https://www.publicinternationallawandpolicygroup.org/pilpg-icc-otp-gender-persecution-initiative> (Accessed on 15.09.2025): "(...) portion of that PILPG March 2022 Commentary reviewing the OTP's post-2014 practice as relates to charging and prosecuting SGBV crimes (...)".

thirteen new preliminary examinations, nine of which involved crimes of sexual and gender-based violence and four were initiated at the request of the State Party.⁴³

The preliminary examinations are included in SGBV. Preliminary investigations were concluded with satisfactory results, which meet the criteria for proceeding with investigations into war crimes and crimes against humanity.

In Nigeria and Ukraine, crimes of sexual and gender-based violence are included in the evidence. They are deemed sufficient to proceed to the investigative phase (Grey, 2019). The prosecutor's office was open for SGBV and intensified the prosecution process for defendants who committed these crimes. The 2014 policy document reports that sexual and gender-based violence crimes have increased by more than 50% for crimes charged to the ICC.

In the Alfred Yekatom and Patrice-Edouard Ngaïssona case (ICC, 2021), the First Trial Chamber upheld the prosecutor's office's charges against Ngaïssona for the crime of rape, a war crime, and a crime against humanity. The prosecutor's office amended the indictment to include other sexual and gender-based violence crimes, such as gender-based persecution.⁴⁴

⁴³FIDH/WIGJ Report, op. cit., 8-9: “(...) *proprio motu* investigations included Iraq, United Kingdom, Burundi, Philippines, and Bangladesh/Myanmar (...)”.

⁴⁴PILPG March 2022 Commentary, op. cit., 7-8 and n. 55: “(...)Yekatom and Ngaïssona Case Information Sheet, supra note 96 (concluding there were substantial grounds to believe Ngaïssona was responsible for: “(i) the war crimes of directing attacks against the civilian population, murder, torture, cruel treatment, rape, directing

The First Trial Chamber rejected the related amendment request, and related concerns relate to the delay of the trial (Grey, 2020; Grey, 2021).

Sexual and gender-based violence. Sentencing in practice

The convictions for sexual and gender-based violence in the 2014 policy document, as well as the evidence from the Prosecutor's Office, faced difficulties and demonstrated reasonable doubt for these types of crimes that the defendant was responsible. The court heard charges of sexual violence and slavery against Germain Katanga and Mathieu Ngudjolo Chui,⁴⁵ both of whom were convicted of the related charges. The First Trial Chamber quashed the charges against the two in November 2012. At the end of December 2012, Ngudjolo was acquitted of all related charges.

In 2014, the First Trial Chamber convicted Katanga of complicity in crimes against humanity and war crimes based on homicide-related offenses, such as attacking the civilian

attacks against buildings dedicated to religion, displacement of the civilian population, destroying the property of an adversary, pillaging; and (ii) the crimes against humanity of murder, deportation, forcible transfer of population, imprisonment and other forms of severe deprivation of physical liberty, torture, rape, persecution and other inhumane acts (...)"

⁴⁵Katanga and Ngudjolo were charged with committing crimes in the Ituri region of the Democratic Republic of the Congo in connection with an attack on the village of Bogoro. See Case Information Sheet: Situation in the Democratic Republic of the Congo, The Prosecutor v. Germain Katanga, INT'L CRIM. CT. (July 2021), <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/KatangaEng.pdf> Accessed on 15.09.2025. ICC Case Information Sheet: Situation in the Democratic Republic of the Congo, The Prosecutor v. Mathieu Ngudjolo Chui, ICC (July 2021).

population, destruction of property, and looting.⁴⁶

The first trial chamber acquitted the defendants of charges of sexual and gender-based violence, holding that the evidence did not sufficiently demonstrate Katanaga's responsibility for these types of crimes.⁴⁷ The office of the prosecutor⁴⁸ obtained a conviction for sexual violence against the accused Jean-Pierre Bemba Gombo, after the chamber of appeal's acquitted Bemba of these charges.⁴⁹

The news promising for the development of international criminal law in the area of sexual and gender-based violence crimes was unanimously confirmed in the pre-trial chamber. Indeed, all charges against Bosco Ntaganda and the charges of sexual and gender-based violence were unanimously upheld. In 2021, Ntaganda's conviction for war crimes and humanity crimes, as well as rape and sexual slavery, was upheld in the appeal chambers, a definitive ruling in the jurisprudential history of the ICC.

In 2016, the first ICC trial upheld all charges in the Dominic Ongwen case. Nineteen charges of sexual and gender-based violence were upheld until the pre-trial chamber. In February 2021, the first trial chamber upheld the indictment against

⁴⁶See, Ngudjolo Case Information Sheet, op. cit.

⁴⁷See, Katanga ICC Case Information Sheet, op. cit.

⁴⁸FIDH/WIGJ Report, op. cit., par. 14.

⁴⁹ICC, Bemba Case, INT'L CRIM. CT., <https://www.icc-cpi.int/car/bemba>
Accessed on 15.09.2025.

Ongwen in Uganda, including the charges of sexual and gender-based violence. The Ongwen case was the first for the Office of the Prosecutor to uphold charges of crimes against humanity. Ongwen was sentenced to 25 years in prison, and the appeal chambers upheld the pre-trial chamber's decision regarding his guilt and sentencing.⁵⁰

The Office of the Prosecutor's record of convictions for sexual and gender-based violence crimes was inconsistent with the 2014 policy document published. The Office of the Prosecutor did not convict another defendant for sexual and gender-based violence crimes, even though the same charges were also filed in the Thomas Lubanga Dyilo case.⁵¹ In the latter case, the UN and non-governmental organizations testified in the related trial (Grey, 2019).⁵² After 2014, the Office of the Prosecutor's investigations into sexual and gender-based violence crimes had improved significantly.

⁵⁰Ongwen Case Information Sheet, op. cit., par. 112. ICC Press Release, Ongwen Case: ICC Appeals Chamber Confirms the Conviction and Sentencing Decisions (15 December 2022), <https://www.icc-cpi.int/news/ongwen-case-icc-appeals-chamber-confirms-conviction-and-sentencing-decisions> Accessed on 15.09.2025.

⁵¹Lubanga Case, INT'L CRIM. CT., <https://www.icc-cpi.int/drc/lubanga> Accessed on 15.09.2025.

⁵²FIDH/WIGJ Report, op. cit., 9. Grey affirms that: "(...) the disappointment of the Lubanga case from a gender perspective because despite "leading evidence of sexual violence against UPC "child soldiers" at trial, the OTP did not mention this violence at the pre-trial stage (...) accountability for sexual violence in the case, nor reparation for the harms caused to victims (...)".

Gender-based persecution as a crime

Gender-based persecution, according to what we have from the Office of the Prosecutor and related complaints in preliminary investigations,⁵³ provides insight into how the ICC carries out its work in this regard. The Office did not achieve the objective pursued by the related complaints as it initially intended. Evidence indicated that the open investigations included allegations of gender-based persecution against both male and female victims.⁵⁴ Since September 2019, the pre-trial chamber upheld the related allegations of gender-based persecution in the Prosecutor v. Al Hassan case.⁵⁵ These allegations described crimes of rape, sexual assault, torture, and murder committed against civilians for women and sexual reasons. The Office of the Prosecutor argued and stated that:

“(…) that Al Hassan and other members of Ansar Eddine particularly targeted women and young girls on the basis of gender (…) motivated by discriminatory opinions regarding gender roles (…)”.⁵⁶

⁵³PILPG March 2022 Commentary, op. cit., 8-9 n. 58.

⁵⁴FIDJ/WIGJ Report, op. cit., par. 13.

⁵⁵According to the ICC’s Case Information Sheet, Al Hassan was a member of Ansar Eddine, and a de facto chief of the Islamic police, involved in the Islamic court’s work in Timbuktu, Mali. Case Information Sheet: Situation in Mali, The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC (February 2022), <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/al-hassanEng.pdf> (Accessed on 15.09.2025): “(…) OTP alleges that he committed crimes against humanity and war crimes in Timbuktu between 2012 and 2013 as part of the armed group Ansar Eddine (associated with Al Qaeda in the Islamic Maghreb) (…)”. Al Hassan Case, ICC, <https://www.icc-cpi.int/mali/al-hassan>

⁵⁶FIDH/WIGJ Report, op. cit., par. 13: “(…) alleged rules that would be severely sanctioned if they were not followed, including rules requiring women to adhere to a strict dress code, to remain segregated from men, and to leave their homes only under certain conditions, as well as alleging that women were subjected to rape and other

The trial against Al Hassan began in 2020 with extensive evidence presented, including that of the crime of gender-based persecution, demonstrating the continued commitment to combating such crimes. Gender was listed as a ground for persecution in the original charges brought against Abd-Al-Rahman after the related arrest warrant was issued in 2007 and the request for a warrant from the former prosecutor Bensouda, who amended the charges in 2021.⁵⁷ It was suggested that the sexual crimes against women were sex-related and appeared to constitute persecution based on gender and ethnicity.⁵⁸ The trial against Abd-Al-Rahman began in April 2022 and continues without a final conviction.

The Prosecutor's office and the policy on gender-based persecution

With the new Prosecutor of the ICC, Karim Khan, justice efforts for victims of sexual and gender-based violence have been strengthened and guaranteed since December 2022.⁵⁹ For all

inhumane acts (...)"

⁵⁷Abd-al-Rahman is alleged to be a leader of the Militia/Janjaweed in Darfur, Sudan, and is charged with thirty-one counts of war crimes and crimes against humanity committed in Darfur between 2003 and 2004. Abd-Al-Rahman Case, ICC, <https://www.icc-cpi.int/darfur/abd-al-rahman> Accessed on 15.09.2025.

⁵⁸See Prosecutor v. Abd-Al-Rahman, ICC-02/05-01/20-325-Conf-Anx1-Corr2, Second Corrected Version of the Document Containing the Charges, ICC, (29 March 2021): https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2021_03707.PDF Accessed on 15.09.2025.

⁵⁹Gender Persecution Policy, op. cit.: "(...) OTP Prosecutor Karim Khan's formal launch of the Policy on 7 December 2022, (...) the OTP's Special Adviser on

crimes of sexual and gender-based violence, gender-based persecution has been part of a crime that has rarely been investigated or indicted in the jurisprudential history of the ICC and/or international criminal tribunals.

A specific policy for gender-based persecution began in the 2014 document that proposed a remedy for this type of wrong.⁶⁰ Crimes of sexual and gender-based violence, including gender-based persecution, are recognized as crimes provided for by the ICC Statute for the investigation and prosecution of crimes that are fundamental to the Office of the Prosecutor of the ICC.

The Office of the Prosecutor has decided to pay attention to the Commission on Crimes, including gender-based persecution, and the stages of its work, that is, from preliminary examination to investigation, trial, conviction, appeal, and reparations.

The 2024 programming document was based on a framework with key terms and characteristics regarding gender-based

Gender Persecution, was present and outlined many of the Policy's key features for audience members (...)". See Press Release CUNY School of Law, Professor Lisa Davis appointed Special Adviser on Gender Persecution by Prosecutor of ICC (18 Nov. 2021): https://www.law.cuny.edu/newsroom_post/professor-lisa-davis-appointed-special-adviser-on-gender-persecution-by-prosecutor-of-icc/ Accessed on 15.09.2025: "(...) the Policy itself recounts, the Prosecutor appointed Professor Davis "to draft [the] Policy on Gender Persecution and to assist the Office in strengthening its capacity to respond effectively to gender persecution and applying a gender-component approach to all aspects of its work (...)".

⁶⁰PILPG March 2022 Commentary: "(...) PILPG, together with its law firm partners, also submitted commentary in response to the OTP's proposed Gender Persecution Policy in November 2022. Debevoise and PILPG Comments to International Criminal Court Prosecutor on Draft Gender Persecution Policy, Debevoise & Plimpton (28 November 2022): <https://www.debevoise.com/news/2022/11/debevoise-and-pilpg-submit-commentary> Accessed on 15.09.2025.

persecution from the Office of the Prosecutor. The challenges related to complex issues having to do with the investigation and prosecution of crimes and gender-based persecution, such as the distinction between intent and pure motive, as well as victim participation. These issues, as emphasized by the Prosecutor's policy, are linked to fundamental education and training.

The Office of the Prosecutor has followed up on these commitments by developing guidelines and training materials on issues that assist investigators, prosecutors, judges, and other professionals in the investigation and prosecution of gender-based persecution.

Overview of the office of the prosecutor's policy on gender-based persecution

The gender-based persecution policy includes terms such as gender, gender-based persecution, intersex, and LGBTQI+. Gender is a social construct that evolves over time, referring to and recalling Article 21 of the ICC Statute. Gender-based persecution describes crimes committed against individuals based on sexual characteristics related to gender definition. These characteristics of a policy include the definition of individuals who do not identify as men or women.

Since 2022, this policy has indicated that the prosecutor has adopted a broad consideration for the victim population who

have been victims of the crime of gender-based persecution. This policy has introduced a general framework that outlines key objectives, such as: - the ICC prosecutor's ongoing commitment to combating sexual and gender-based crimes; - providing clarity and guidance to staff on the interpretation and application of the ICC Statute to ensure the effectiveness of investigations and prosecutions for gender-based persecution at the ICC criminal proceedings stage; - promoting and contributing to a culture of best practices for the investigation and prosecution of gender-based persecution within the Office of the Prosecutor in a general manner; - seeking development through international jurisprudence in the area of gender-based persecution; - addressing gender-based persecution as a significant and not secondary crime, thus supporting genuine domestic proceedings.

In this regard, the Office of the Prosecutor has expressed its commitment to prosecuting SGBV crimes, including the crime of gender-based persecution, in order to develop international criminal law.

A policy that closely follows the analysis of gender-based persecution within its mandate. A policy that has adopted measures aimed at: - improving the application of the gender policy approach in its work; - prosecuting gender discrimination; - encouraging complementary efforts by states

and stakeholders to prevent and punish gender-based persecution.

This policy defines a precise plan based on objectives that provide elements of persecution as a crime against humanity, pursuant to Art. 7, paragraph 1, letter h) of the ICC Statute, which applies to gender-based persecution. Through this policy, the Office of the Prosecutor addresses investigations and prosecutions of gender-based persecution as well as the stages of the ICC criminal process, including preliminary investigations, criminal proceedings, convictions, appeals and ancillary proceedings such as reparations, cooperation in external relations and institutional development (Liakopoulos, 2019d). The gender prosecution policy also addresses challenges that govern the prosecutor's work.

These challenges serve to monitoring the implementation of this type of policy. The prosecutor's office demonstrates that it has incorporated necessary monitoring and review to achieve objectives that, in reality, result only from its own policy, the 2014 programming document.

Accuracy and characteristics of the policy of gender-based persecution

Gender-based persecution and development are discussed in the field of international criminal law for crimes of sexual and

gender-based violence. This broad definition of gender continues to reflect the nature and evolution of societies, as well as the human rights protected internationally, where gender as a crime transcends the feminine-masculine binary.

This approach is consistent with the development of international human rights law in this area. The policy of gender-based persecution also reflects the framework of social criteria used to define the roles of men and women, a framework of a social construct within a society that changes over time. This interpretation of gender is based on the spirit of the statute, and especially of Article 21 of the ICC.

The two sexes, male and female, are enshrined in Article 21, paragraph 3, of the Rome Statute, which provides treaty provisions that are interpreted in accordance with internationally recognized human rights. In this context, the definition of gender is understood as a modern international human rights practice within a biological and socially constructed concept.

The gender-based prosecution policy contributes to a defining interpretation of gender, according to the ICC Statute, which highlights an important context for an investigation and prosecution of gender-based persecution and related crimes.

A new term in the policy is the term “intersex”, included as a definition of the Office of the Prosecutor's Office's evolving understanding that reflects its intentions in the investigation and

prosecution of gender. The 2014 policy takes the social context a step further by using a set of social criteria used to define gender, including sexual orientation, gender identity, and gender expression such as woman, man, girl, etc.

These social criteria are used to define the understanding of one's ethnicity, culture, race as well as to define the understanding of one's gender, one's jurisdictions (Aboueldahab, 2021),⁶¹ the positions of the international organizations⁶² and the experts in this field.⁶³

⁶¹Aboueldahab affirms that: “(...) the Special Jurisdiction for PEACE (JEP), generally charged with holding perpetrators of various crimes committed during the Colombian civil war, has confirmed charges of gender persecution as a crime against humanity committed against several LGBTQI persons in armed conflict. The JEP has thus recognized gender-based persecution as a crime against humanity potentially involving persons who do not perceive themselves as male or female and thus do not fit within the male-female gender binary (...)”.

⁶²Office of the High Commissioner for Human Rights, integrating a gender perspective into human rights investigations: Guidance and practice, 7 (2018): “(...) Gender refers to the socially constructed identities, attributes, and roles of persons in relation to their sex and the social and cultural meanings attached to biological differences based on sex (...)”. Office of the Special Advisor on gender issues and advancement of women, gender mainstreaming: Strategy for promoting gender equality, 1 (2001), <https://www.un.org/womenwatch/osagi/pdf/factsheet1.pdf> (Accessed on 15.09.2025): “(...) Gender: refers to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men (...) opportunities and relationships are socially constructed and are learned through socialization processes (...)”. UN Women, Concepts and definitions (1 August 2001), <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm> (Accessed on 15.09.2025). Commission on the elimination of discrimination against women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/GC/28) par. 5 (2010): “(...) term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women (...)”.

⁶³United Nations human rights special procedures, Position of the UN Special

Toward an intersectional approach

The intersectional approach is adopted through the 2014 Policy on Persecution, which reflects the intersection of gender and other aspects of identity within an individual's circumstances (Davis, 2015; Chertoff, 2017). Thus, intersectionality refers to an individual's lived experiences, including discrimination.

The concept of persecution recognizes gender as well as other factors such as religion, race, and sexual orientation. The judges of the ICC have adopted the provisions of this intersectional approach. The Policy Document of 2014, as well as the Office of the ICC, are committed to understanding factors such as gender, age, race, disability, religion, public opinion, sex, sexual orientation, and so on, as statuses that give rise to discrimination and social inequalities.⁶⁴

It was the ICC that has allowed us to discuss the intersectional

rapporteur on violence against women, its causes, and consequences special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the independent expert on sexual orientation and gender identity, and the working group on discrimination against women and girls on the International Criminal Court policy on gender-related prosecutions, Office of UN High Commission for human rights (21 April, 2021): <https://www.ohchr.org/sites/default/files/2022-04/ICC-Position-Paper21April2022.pdf> (Accessed on 15.09.2025): “(...) 2022 Policy “should go beyond the binary mold to recognize the identity and rights of non-binary persons (...)”.

⁶⁴Prosecutor v. Al Hassan, ICC-01/12-01/18-767-Corr-Red, Rectificatif de la Décision Portant Modification des Charges Confirmées le 30 Septembre 2019 à l’Encontre d’Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, par. 166 (8 May 2020): “(...) the Decision Confirming the Charges, it noted that the violence against women could have been equally motivated by considerations tied to the color of their skin, with women with darker skin more touched by the violence than others (...) recalls in particular the violent way in which [persecutors] treated elderly people, pregnant women, and even children (...)”.

vision of persecution in various cases. It is recalled in the Al Hassan case that the judges considered the race, age and pregnancy status of the victims as factors that confirm the accusations of persecution against the accused. In the Ntaganda case, the court highlighted the prohibition ground for persecution as discrimination sufficient to conclude that the crime of persecution was committed in combination with discrimination.⁶⁵

In the reparation phase, the court highlighted the intersectional identities of the victims such as gender, ethnicity and age.⁶⁶ An intersectional perspective functions as a key for authors and experts who are part of the gender-based persecution policy as presented in March 2022.⁶⁷ The comment of 2022 has received increasing attention from the ICC and other human rights bodies in the context of international law (Khan, 2022).⁶⁸

Gender-based persecution includes intersectionality as a guiding

⁶⁵Prosecutor v. Ntaganda, ICC-01/04-02/06, Judgment with Public Annexes A, B and C, par. 1009 (8 July 2019).

⁶⁶PILPG November 2022 Commentary, op. cit., 20 (citing Prosecutor v. Ntaganda, ICC-01/04-02/06, Reparations Order, par. 60 (Mar. 8, 2021)); see id. 53 (recognizing that the “differential impact of crimes on boys and girls must be taken into account (...) sexual violence against girls under the age of 15 who became pregnant as a result of rape and sexual slavery (...”).

⁶⁷PILPG March 2022 Commentary, op. cit., 123-138.

⁶⁸UN Special Rapporteur Report, op. cit.: “(...) gender intersects with other protected grounds, including sex and sexual orientation, to produce particularly heightened vulnerabilities for certain groups and individuals (...)”. Khan affirms that: “(...) gender often intersects with “other discriminatory regulations used to reinforce systems of oppression, including, but not limited to, race, ethnicity, nationality, religion, Indigenous status, immigration status, or disability status” and that when prosecuting gender-based violence accountability mechanisms should take into consideration other intersecting forms of discrimination (...”).

principle, which explicitly contains recommendations for every stage of the ICC proceedings, including indictment decisions,⁶⁹ investigations,⁷⁰ and sentencing.⁷¹ The intention of the ICC Office includes an intersectional perspective, which comprehensively addresses the policy of gender-based persecution, drawing on a broad aspiration from the 2014 policy document on intersectionality, which supported the cases of Ntaganda and Al Hassan at the ICC.⁷²

In seeking a defensive position, the policy of gender-based persecution follows cultural relativism, which is affirmed through violations of international law that is not culturally determinant. Violations of fundamental rights are not ignored, justified, or rejected based solely on culture.

Cultural relativism is based on ethical and social standards that reflect the cultural context they originate from. Thus, the concept of cultures that are different and fundamental to one another is embraced as a moral and structural framework for

⁶⁹Gender Persecution Policy, op. cit., par. 33: “(...) an intersectional approach to gender persecution with persecution based on political, racial, national, ethnic, cultural, religious or other grounds (...) and hold perpetrators accountable for multiple or intersecting forms of persecution recognised under the Statute (...)”.

⁷⁰Gender Persecution Policy, op. cit., par. 81: “(...) an intersectional analysis to gender persecution conduct, recognizing that such acts or crimes may also be motivated by additional and intersecting persecutory grounds under article 7(h). (...)”.

⁷¹Gender Persecution Policy, op. cit., par. 67: “(...) Office will take into account whether there were multiple forms of persecution, the multi-faceted character of the act or acts (...) [and] will apply an intersectional approach to its assessment of the discriminatory basis for such acts (...)”.

⁷²Cultural Relativism, Carnegie Council, <https://engage/key-terms/cultural-relativism> Accessed on 15.09.2025.

relations within one's own society.

Cultural relativism determines the ethical standards of a society through action, whether right or wrong. Cultural relativism, as an argument in international law and human rights protection, has given rise to arguments such as accusations of gender-based persecution brought by the prosecutor's office, as we saw in the Al Hassan case, which argued that certain Islamic practices can give rise to accusations of persecution.⁷³

Cultural relativism has not justified responsibility for human rights violations, which in the Al Hassan case was successful in defending atrocity crimes (Luban, 2004; Bostian, 2005). Gender-based persecution aligns with understandings and arguments of cultural relativism, which do not negate responsibility for human rights violations.

Human rights also protect gender-based persecution. This policy contributes to a vision that expressly affirms the fundamental right to protection from gender-based persecution, which is non-derogable under the normative framework of the ICC Statute.

The distinction between intention and motive

Motive and intention for the persecution of a gender-based crime are not the same thing within the scope of investigations and criminal proceedings for acts that constitute gender-based

⁷³Prosecutor v. Al Hassan, ICC-01/12-01/18-376-Red, Request for the Disqualification of Judge Marc Perrin de Brichambaut, par. 29(c) (18 June 2019).

persecution.

The policy recognizes concepts that ultimately do not deny the discriminatory intent of each motive and intention, which is analyzed and examined as a gender analysis. Within this policy, personal motives serve as factors that are aggravated and discriminated against based on gender, affirmatively establishing proof of the crime and gender-based persecution.⁷⁴

The distinction between motive and intention is recognized and discussed by international criminal tribunals.⁷⁵

Motive corresponds to a causal power, like a driving force, that pushes the agent toward their action (Kaufman, 2003). Motive is contrasted with intention, which primarily reflects the immediate intention that was consciously and intentionally

⁷⁴Rome Statute, op. cit., art. 7(2)(g): “(...) ‘persecution’ as ‘the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity (...)’”.

⁷⁵ICTR, *Prosecutor v. Bagilishema*, ICTR Case No. ICTR-95-1A-T, Judgment, par. 95 (June 7, 2001): “(...) the motives (as distinct from the intent) of the Accused are not of relevance to the legal constitution of a crime against humanity (...)”. ICTY, *Prosecutor v. Kunarac*, ICTY Case Nos. IT-96-23 & 23/1-T, Judgment, par. 433 (February 22, 2001): “(...) motives of the accused for taking part in the attack are irrelevant (...) crime against humanity may be committed for purely personal reasons (...)”. *Prosecutor v. Kupreškić*, Case No. IT-95-16-T, Judgment, par. 558, (January 14, 2000): “(...) the motives (as distinct from the intent) of the accused, as such, of special pertinence (...)”. *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgment, par. 270 (July 15, 1999): “(...) relevant case-law and the spirit of international rules concerning crimes against humanity make it clear that under customary law, ‘purely personal motives’ do not acquire any relevance for establishing whether or not a crime against humanity has been perpetrated (...)”. *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Judgment Pursuant to Article 74 of the Statute of March 7, 2014, par. 1125: “(...) perpetrator’s motive (...) irrelevant to such proof and for his or her act to be characterised as a crime against humanity, it suffices to establish, in view of the context, knowledge of the particular fact that his or her act formed part of the attack (...)”.

chosen. In criminal law, persecution immediately invokes intention, which retrogradely meets the basic motive.⁷⁶ A defendant intends to commit such a crime and pursues it for gender-related reasons, but the motive can be sexual gratification, as well as the opportunity to commit rape. From the traditional perspective, the motive is irrelevant to liability, which complicates a person's guilt by investigating the motivation of a person who commits a criminal act. Motive is expressed through the elements of a specific crime.

The traditional view is that the defendant's motive is irrelevant to his or her liability. For the ICC, motive becomes relevant to aggravating the sentence, as confirmed by international courts and prosecutors who ignore the racist beliefs that motivate the perpetrators.

The courts have clarified that the motivation to commit an act of sexual violence does not invalidate the intent to discriminate. The opinion holds that motivation is irrelevant to the purposes of determining the defendant's own responsibility, as confirmed by international criminal courts that have not denied the defendant's discriminatory intent.

Gender-based persecution confirms that motivation is not irrelevant to liability objectives. Motivation in itself does not

⁷⁶Prosecutor v. Blaškić, Case No. IT-95-14-A, Judgment, par. 694 (July 29, 2004): “(...) *Mens rea* is the mental state or degree of fault which the accused held at the relevant time. Motive is generally considered as that which causes a person to act (...)”.

negate the intent to discriminate. The perpetrator thus intends to act normally according to the events that led to the crime of gender-based persecution and the intention to satisfy the perpetrator, who was motivated to commit the crime for personal reasons.

The gender-based persecution policy recognizes that investigators, prosecutors, and judges benefit from other guidance applied to the concepts of intent and motive and the variety and factual circumstances that give rise to a charge of gender-based persecution.

The guidelines significantly shape the effective implementation of the Office of the Prosecutor's policy, which is the basis for a subjective approach to the crime of persecution. The gender-based persecution policy broadly embraces persecution, considering a category of victims who share the same characteristics, focusing on the motivations that led to their persecution.

The Office of the Prosecutor has adopted a policy that criminalizes harassment based on the belief in maleness and femaleness. The gender-based harassment policy specifies that:

“(...) persons may be targeted for gender persecution when they are perceived to have or carry (gender) criteria prohibited by the perpetrator; or are perceived to not have or carry (gender) criteria required by the perpetrator (...) targeted persons are required to be directly part of the targeted group (...) are sympathisers or affiliates of targeted members (...) if a perpetrator

targets a school to prevent girls from attending, men who are teachers and staff at that school may form part of the targeted group, where the grounds for targeting are based on gender (...)” (Grey, 2019; Davis, 2021; Liakopoulos, 2024)⁷⁷.

Regarding the subjective approach adopted by the Office of the Prosecutor for the gender-based persecution policy, the reasons for victimization of a group have certain characteristics. The policy conceives that the gender-based persecution includes acts committed against a gender-based group as gender-motivated.

In this regard, the ICC adopted a subjective view of gender-based persecution in some past cases. For example, the decision authorizing the relevant investigation in Myanmar, with which the First Trial Chamber established the identity of a persecuting group, examined both objectively and subjectively the objective identity of a group, which includes its identifying characteristics. Instead, subjective identity referred to a group's perception of itself through its members and the perpetrator.⁷⁸

In the Al Hassan case, the Office of the Prosecutor charged the

⁷⁷Grey affirms that: “(...) a perpetrator-focused approach enables prosecutions “based on beliefs about what it means to be “male” or “female” including acts aimed at enforcing a persecutor’s beliefs about the ideal behavior of males and females, respectively”. Davis affirms that: “(...) gender-based crimes are used as punishments against those who are perceived to transgress assigned gender narratives that regulate [the] “accepted” forms of gender expression [which] manifest in [certain] roles, behaviors, activities or attributes (...)”.

⁷⁸Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-27 14-11-2019, par. 103 (14 November 2019): “(...) subjective criteria, the perception of the group by the perpetrator as well as the perception and self- identification of the victims may be considered (...)”:

defendant with the crime of gender-based persecution, which proceeded under a subjective approach. The first trial chamber in the Al Hassan case adopted such an approach, finding that the violence constituted gender-based persecution for women who were treated and persecuted as objects in the society.⁷⁹ Gender persecution is consistent with the authors and policy groups of the office of the prosecutor.⁸⁰

The prosecutor's office's understanding of gender-based persecution leads to the adoption of a diverse perspective that recognizes that anyone can be a victim or perpetrator of persecution.

According to the Public International Law & Policy Group (PILPG) commentary of March 2022 and the 2022 policy document regarding gender-based persecution, the prosecutor's office is aware of persecution based on ways in which victims choose to be identified. It is not prosecuted for traditional gender-based crimes, if we call them that, but whenever they are committed against women, given that the Court has the tools to

⁷⁹Prosecutor v. Al Hassan, ICC-1/12-01/18, Rectificatif à la Décision relative à la confirmation des charges portée contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, par. 700 (13 November 2019): “(...) estime que cela constitue également une persécution pour motifs sexistes, en ce que ces femmes étaient traitées comme des objets (...)”.

⁸⁰PILPG March 2022 Commentary, op. cit., 13-14. Comments on the Development of a Policy on the Crime against Humanity of Gender Persecution, Submission from UN Women to Office of the Prosecutor at the International Criminal Court, UN Women (March 2022), <https://www.unwomen.org/sites/default/files/2022-10/Brief-Comments-on-the-development-of-a-policy-on-the-crime-of-gender-persecution-en.pdf> Accessed on 15.09.2025.

prosecute cases that stem from a modern definition that reflects its own society.

The court thus encourages member and non-member states to assume responsibility for extending the prosecution of gender-based persecution to sexual and gender-based crimes in a general way (Davis, 2021).⁸¹ This type of policy departs from the idea that gender-based violence is an issue that is exclusively female in nature.

Challenges of recognition and victim participation

Prosecuting gender means acknowledging the challenges victims face. Some of these belong to vulnerable populations who for a variety of reasons are unwilling to share details with the public.⁸²

The measures adopted by the Office of the Prosecutor address the safety, well-being, privacy, and dignity of victims of gender-based persecution. The 2014 policy was committed in collaboration with states, civil society and organizations. The perpetrators continued to effectively improve prevention against gender-based persecution. The policy explicitly recognized the involvement of victims and of their groups who successfully

⁸¹Davis affirms that: “(...) binary and patriarchal framing of sexual violence as a ‘women’s issue’ has further ensconced the institutionalization of gender discrimination against women and girls and the invisibilization of LGBTIQ non-binary and gender non-conforming persons’ rights (...)”.

⁸²PILPG March 2022 Commentary, op. cit., parr. 16-19. Gender Persecution Policy, op. cit., parr. 29, 76-78.

investigated gender-based persecution crimes.

Victim participation is crucial to achieving the ICC's mandate to hold those accountable for crimes, including the crime of gender-based persecution. Victims at various stages of the Office of the Prosecutor's investigative and prosecution work raise unique challenges regarding gender policy, based on the 2014 document, for the commitments to engage and support these victims during the process.

According to PILPG, the Office of the Prosecutor takes into account commitments to victims as actors in a fight that ensures perpetrators of gender-based crimes of persecution,⁸³ that is, specific, *ad hoc* commitments for victims that are aligned with their participation at the ICC.⁸⁴ The Office of the Prosecutor takes into account the commitments to victims and the work that has been carried out in the past by the Office of the Prosecutor.

Effective implementation of the guarantee for gender-based persecution

Effectiveness and implementation also encompass the gender-based persecution policy in a comprehensive and exceptional

⁸³PILPG March 2022 Commentary, op. cit., par. 87, 15; PILPG November 2022 Commentary, op. cit., par. 10.

⁸⁴ICC, Understanding the International Criminal Court, ICC-PIOS-BK-05-009/20_Eng (2020) par. 70, <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>: Accessed on 15.09.2025. “(...) Victims before the ICC have rights that have never before been granted before an international criminal court (...)”.

manner. This includes gender understanding; procedural improvements in the ICC proceedings; engaging civil society as stakeholders; proposing institutional development for the Office of the Prosecutor's Office staff; and clearly addressing crimes included in the ICC Statute.

The Office of the Prosecutor is facing challenges regarding the effectiveness and implementation of the 2014 Programming Document. The parties seek precise results for investigations, prosecutions, and convictions for gender-based persecution crimes.

The Office of the Prosecutor has demonstrated its leadership in the development of international criminal law, especially in the area of gender-based persecution, through its commitment to ensuring protection for victims of gender-based persecution.

The gender-based persecution policy highlights a form of policy that seeks to regularly monitor and evaluate its implementation. This policy stated that the document does not address impunity and gender-based persecution. The gender-based persecution policy implements training protocols for staff, the creation of internal monitoring, and guidelines that are translated and implemented in practice. The challenges were numerous and often confused by intent and motive.

Prosecutors are able to distinguish between evidence and the appropriate use of promoting a subjective view of the crime of

gender-based persecution. Investigators effectively proceed to criminal prosecution. What interests us is the judicial analysis of persecution that offers formal recognition to gender, racial, and ethnic minorities who have resisted in their communities. Thus, they offer victims the opportunity to fight against a racist and homophobic ideology that plays a role in the violence committed against victims of sexual and gender-based violence (Suresh, 2021).

Investigations, prosecutions, and successful trials have verified that victims are the result of transitional justice processes. Victims do not contribute to transitional justice processes like criminal proceedings, thus offering victims the opportunity to be perceived as holders of their rights. Evidence of sexual and gender-based violence crimes is difficult to collect, and victims are forced into silence and risk social stigma.⁸⁵

A trauma can also prevent victims from remembering events relevant to the case. These difficulties are acknowledged in the policy document, which recognizes the need to adopt a victim-centered approach and seek effective consultation with groups that consider victims' interests. The Office of the Prosecutor has

⁸⁵ICC, Prosecutor v. Bosco Ntaganda, Prosecution's list of expert witnesses and request pursuant to Regulation 35 to vary the time limit for disclosure of the report of one expert witness, 16 April 2015, ICC-01/04-02/06-560, par. 10(vi), <http://www.legal-tools.org/doc/210cb9/> Accessed on 15.09.2025. "(...) expert are referenced in the transcripts of the expert's evidence); ICC, Prosecutor v. Bosco Ntaganda, Trial Chamber, Transcript, 18 April 2016, ICC-01/04-02/06-T-84-ENG, 10, <http://www.legal-tools.org/doc/6e8319/> Accessed on 15.09.2025.

developed the policy document to engage victims, who are actors in international justice.

The Gender-Based Persecution Policy builds on previous work of the Office of the Prosecutor, which recognizes the need to engage victims of gender-based persecution. Information, resources, training, and guidance help the Office of the Prosecutor achieving its goal without including victims and the stages of gender-based persecution. Guidance and training support is, for the Gender-Based Persecution Policy and for the implementation of discussions that address the complex aspects of the policy, a reality.

Training, education and the distinction between intent and motive

The investigation and prosecution process by the Office of the Prosecutor has shaped the subjective approach to gender-based persecution, which allows prosecutors to distinguish between motive and intent.

The subjective and objective approach has considered the victims perceived by the offender as the object of investigation. The subjective approach and the persecution of individuals are paths that do not share the same external and unifying characteristics. The PILPG's March 2022 commentary stated, in this regard, that this:

“(...) approach is also consonant with the need to prove intent. In every case it brings, the OTP will need to establish that the perpetrator subjectively held discriminatory intent, no matter how apparent or obscure the unifying characteristics of the victims (...)”.

Objective evidence focuses on the intention that subjectively pursues the defendant.

Training helps in the investigative phase, and the Office of the Prosecutor thus improves judicial outcomes by ensuring the evidence is available at trial. The PILPG's November 2022 comment stated:

“(...) OTP's contemplated staff training could include: identifying and distinguishing each category of evidence; clearly referring to each category as such at trial; maintaining clear parameters of what is needed to satisfy the elements of gender persecution; and the preservation of motive evidence for appropriate phases of trial and sentencing (...)”.⁸⁶

Evidence relating to motive represents mitigating factors during the sentencing phase. The Office of the Prosecutor develops guidelines as evidence that best utilizes gender-based persecution cases.⁸⁷

⁸⁶PILPG November 2022 Commentary, op. cit., par. 8.

⁸⁷Gender Persecution Policy, op. cit., par. 111: “(...) Office will create and maintain regular and situation-specific updates for investigative materials to further assist in identifying and investigating gender persecution, such as: (1) topic questionnaires, (2) elements guidelines, and (3) practical guidelines for implementation of this Policy (...) will also provide ongoing staff trainings on how properly to conduct Court examinations of cases for persecution contexts (...) will also provide ongoing staff trainings on methodologies in the collection and analysis of evidence of gender persecution, presentation of in-court witness testimony, the relevant legal framework, and cultural and gender issues related to the situation and specific communities where the investigation is being conducted (...)”.

Fighting gender-based persecution and victim participation

Developing guidelines for gathering evidence that supports reparation objectives is a reality. Gender-based persecution policy collaborates with and regulates victims, facilitating discriminatory intent, formulating charges that fully reflect the harm caused, and designing reparation that responds to crimes committed.⁸⁸

Evidentiary challenges for victim participation and gender-based persecution policy require training for investigators, namely, how to conduct interviews and gather information. Clear policies and guidelines are adopted, and victims and legal representatives are involved in preliminary investigations for gender-based persecution. The prosecutor's office considers cumulative charging decisions. Previous international criminal tribunals and gender-based persecution evidence are used to support charges for persecution on other grounds *per se*.⁸⁹

The 2014 policy document and the Office of the Prosecutor's

⁸⁸Gender Persecution Policy, *op. cit.*, par. 10, 49–54, 94–95.

⁸⁹Prosecutor v. Katanga, ICC-01/04-01/07-T-336-ENG, Closing Statements Transcript of 15 May 2012, at 7. Prosecutor v. Katanga, ICC-01/04-01/07-T-206-Red, Trial Hearing Transcript, at 17 (19 October 2010). Prosecutor v. Katanga, ICC-01/04-01/07-T-80-ENG, Trial Hearing Transcript of November 24, 2009, par. 25. Prosecutor v. Bemba, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo of 15 June 2009, parr. 297–300, 302, 501. Prosecutor v. Bemba, ICC-01/05-01/08-3636-Red, Judgment on the Appeal of Mr. Jean-Pierre Bemba Gombo against Trial Chamber III's Judgment of 8 June 2018, par. 196. Prosecutor v. Lubanga, ICC-01/04-01/06, Separate and Dissenting Opinion of Judge Odio Benito of 10 July 2012, parr. 21–23

Office as a new gender-based prosecution policy recognize the reality of gender-based persecution by continuing to pursue cumulative prosecution appropriately.⁹⁰ Cumulative prosecution is a crucial step in obtaining convictions and sentences that demonstrate the seriousness of one's conduct for the crimes committed. The Office of the Prosecutor codifies the procedures related to charging. The Office of the Prosecutor has developed guidelines regarding the inclusion of victims in the compensation phase.

Victims include the prosecution, which influences the approach to reparations. The gender-based persecution policy emphasizes reparations for persecution, which are gender-based, as well as reparations objectives that do not adequately address the participation of victims.

The gender-based persecution policy offers the Office of the Prosecutor an opportunity to strengthen the legacy of the ICC as a victim-friendly institution.⁹¹ It contributes to positive judicial outcomes and participation, which affords victims a degree of recognition as a component of reparations.

Victim involvement is a component of criminal proceedings and

⁹⁰2014 Policy Paper, op. cit., par. 7; Gender Persecution Policy, op. cit., par. 83-84.

⁹¹Victims, ICC, <https://www.icc-cpi.int/about/victims> Accessed on 15.09.2025: "(...) ICC's recognition that reparation may include "monetary compensation, return of property, rehabilitation, medical support, victims' services centers, or symbolic measures such as apologies or memorials (...) it allows victims to speak their truth and conduct to be preserved in the historical record; and may lead to a conviction and concrete reparations in the future (...)"

gender-based crimes, which include the crime of gender-based persecution. Another reason is the implementation of the gender-based persecution policy, which calls for the development and training of the regime for victim participation and the judicial process.

Conclusions

As we have seen so far, the policy paper under examination has addressed the 2014 policy document of the Office of the Prosecutor and has highlighted the Office's willingness to prosecute the gender-based crime, that is, a crime previously ignored and first pursued by the Office of the Prosecutor in the Al Hassan case. It was a difficult issue for the Office of the Prosecutor to prosecute SGBV crimes. The gender-based crime policy issued in December 2022 representing a direction that fosters hope for sexual and gender-based violence crimes, including the crime of gender-based persecution.

The 2014 and 2022 policy documents on gender-based persecution are rapidly evaluated with policy objectives and goals that are translated into practice. The gender-based persecution policy enables the Office of the Prosecutor to overcome previous difficulties in investigating and prosecuting cases of SGBV, as well as gender-based persecution crimes. Effective implementation of the policy ensures that the Office of

the Prosecutor focuses on gender-based prosecution, which contributes to the success of future cases as well.

The 2014 policy includes elements of a gender-based crime of persecution for stakeholders, i.e., investigators, prosecutors, victims, etc. Education and training, as an integral part of practice, requires time and resources. The Office of the Prosecutor investigates and prosecutes the crime of persecution by considering elements of a range of victims who have suffered gender-based persecution, that is, women, men, and those who are not identified as such and who have suffered persecution for reasons other than gender. This includes victims who are directly supported and assisted by the ICC. States may assist through judicial proceedings in the development of international criminal law by the ICC.

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